In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1575

ROBERT WILSON MORE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Central District of California, petitioner was convicted of willful refusal to submit to induction, in violation of 50 U.S.C. App. 462(a). On March 2, 1970, he was sentenced to three years' imprisonment. The court of appeals affirmed. (Pet. App.)

On October 6, 1961, petitioner, at the age of eighteen, registered with his local draft board in Pasadena, California (S.S.F. pp. 1–2).[1] He was classified II–S on April 15, 1964, and, except for a short period not relevant here (S.S.F. pp. 4–8; 11, 37–38), he held

[1] "S.S.F." refers to petitioner's Selective Service file, (Government Exhibit 1), on file with this Court.

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that classification until December 18, 1968, when he was classified 1–A (S.S.F. p. 12).

Petitioner then requested the board to send him a Special Form for Conscientious Objectors (SSS Form 150), which he received, filled out, and returned to the board on March 18, 1969 (S.S.F. p. 12). Thereafter he requested, and was granted, a personal appearance before the board members; after his appearance, the board classified him 1–A–O (S.S.F. pp. 12, 59, 69–78). On March 27, 1969, petitioner was mailed a Notice of Classification (SSS Form 110) informing him of his 1–A–O status and his right to a personal appearance and an administrative appeal (S.S.F. pp. 12, 54). No appeal was taken.

On May 15, 1969, the board mailed to petitioner an order to report for induction on June 17, 1969 (S.S.F. 12, 55). Petitioner sent the board a letter on May 27, 1969, requesting a meeting with the "appeals board," since, he claimed, after receiving his notice of 1–A–O classification he had examined his conscience and determined that he could not serve in the military in any capacity; he asked for a postponement of his induction. On June 4, 1969, the board advised petitioner that his induction was postponed until the July 1969 induction call. Two weeks later, on June 18, 1969, the board met with petitioner; at that time he requested a I–O classification, stating that he did not then believe in the Vietnam involvement and that "he had this belief about Vietnam since in his second year at college" (S.S.F. p. 63).

On June 27, 1969, the board advised petitioner that it did not specifically find there had been a change in his status resulting from circumstances over which he had no control (S.S.F. pp. 12, 64) and ordered him to report for induction (S.S.F. 13, 65). After a postponement of the induction date, petitioner reported on October 21, 1969 (S.S.F. p. 92), but when called upon to take the symbolic step forward he refused (S.S.F. pp. 95–104). The present indictment and conviction followed, and the court of appeals affirmed.

1. Petitioner challenges the Ninth Circuit's interpretation of Selective Service regulation 32 C.F.R. 1625.2, as having no application to conscientious objector claims first submitted after the mailing of a notice to report for induction. The "identical" issue (Pet. 8), however, was recently before this Court in *Ehlert* v. *United States,* No. 120, this Term, decided April 21, 1971, and the position urged in the instant petition was there rejected.

2. Petitioner's subsidiary claim—that his refusal to submit to induction was not willful—is also without substance. The argument essentially is that he was precluded from showing that in refusing induction he was acting on a "good faith" belief that his classification was invalid. To sustain a conviction under 50 U.S.C. App. 462(a), however, it is enough if the government can prove awareness of the legal obligation and deliberate purpose not to comply. *United States* v. *Boardman,* 419 F. 2d 110 (C.A. 1), certiorari denied, 397 U.S. 991. That burden was clearly met in the instant case.

As pointed out by the court below (Pet. App. 3), petitioner admitted that he "fully intended not to step forward when [he was] ordered to." Moreover, on June 18, 1969, he told the local board that he was aware of the consequences of such action, stating that the penalty was "up to five years in prison or so." (S.S.F. p. 63). On the date he refused to take the symbolic step forward, he signed a statement acknowledging that he was aware of the Act and the penalties for its violation (S.S.F. pp. 95, 115). And, when questioned by the trial judge whether he fully intended not to step forward when ordered to do so, he responded that that was correct (Tr. 126).

The issue of intent was submitted to the jury under the identical instruction upheld in *Harris* v. *United States,* 412 F. 2d 384 (C.A. 9),[2] and the jury decided the question against petitioner.[3] That determination is fully supported by the record and there is thus no cause for further review by this Court.

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[2] The trial judge charged (Tr. 262–263): "With respect to crimes such as the one charged in this case, specific intent must be proved before there can be a conviction. A person who knowingly does an act which the law forbids, or knowingly fails to do an act which the law requires to be done, intending with bad purpose either to disobey or disregard the law, may be found to act with specific intent. An act or failure to act is 'knowingly' done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason. I further instruct you that bad purpose means that if you find beyond a reasonable doubt that the defendant understood that he was required to submit to induction and refused to submit, then he could have a bad purpose if he refused to do so."

[3] The exclusion by the trial judge of evidence of petitioner's motives in challenging a law petitioner considered invalid was plainly proper. As this Court stated long ago in *Warren* v.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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United States, 177 F. 2d 596, 600: "A person may not decide for himself whether a law is good or bad and if bad, that he is free to disobey it." Nor do the decisions in *Morrissette* v. *United States*, 342 U.S. 246, and *United States* v. *Murdock*, 290 U.S. 389, cited by petitioner, in any way undermine that principle. They do not stand for the broad proposition that one who bases his action on a *bona fide* belief in the illegality of government conduct is immune from prosecution, but rather that Congress intended to impose criminal sanctions only for intentional acts and not for mistakes or misunderstandings.

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CERTIORARI DENIED